

Internal Revenue Service
memorandum

CC:TL

Br4:HGSalamy/JTChalhoub

date: **OCT 19 1987**

to: District Counsel, San Diego W:SD

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

This is in response to your September 15, 1987, request for technical advice in the above-entitled Tax Court case.

ISSUE

How should the Service respond to petitioner's request that the respondent file an unobjected to motion to dismiss the petition on the basis that the notice of deficiency had been rescinded and therefore the petitioner "had no right to file a petition with the Tax Court based on such notice." I.R.C. § 6212(d).

CONCLUSION

We believe that proper disposition of the case is as petitioner's counsel suggests. Since under the facts the notice of deficiency had been rescinded, the Tax Court lacks jurisdiction. The appropriate motion, a copy of which is furnished herewith for your use, is "Joint Motion to Dismiss for Lack of Jurisdiction; Prior Rescinded Notice of Deficiency."

FACTS


The facts as presented in your technical advice request are straightforward. The notice of deficiency was rescinded by written agreement executed by the Acting District Director on [REDACTED]. The 90th day for filing a timely petition in the Tax Court was [REDACTED]. A timely petition was filed with the Tax Court on [REDACTED], (stamped [REDACTED] and "POSTMARK DATE [REDACTED] by the Tax Court). From the attachments to your incoming request, it is clear that the parties desire this disposition in order to give further consideration to the years covered by the notice [REDACTED]. The statute of limitations on all years remains open. As stated therein, the petition relates that the filing is being made only because the petitioner has consented to a rescission but "has not received written evidence of the execution of the rescission agreement by the Commissioner."

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Under these circumstances, we have little difficulty concluding that the notice of deficiency was rescinded and that the petition does not give the Tax Court jurisdiction in this case.

ROBERT P. RUWE
Director

By:


HENRY G. SALAMY
Chief, Branch No. 4
Tax Litigation Division

Attachment:
Joint Motion to Dismiss